

Minutes 16 FEBRUARY 2010



Minutes of Extra Ordinary Council meeting of the Port Stephens Council held in the Committee Meeting Room, Raymond Terrace on 16 February 2010, commencing at 5.34 pm.

PRESENT: Councillors B. MacKenzie (Mayor); R. Westbury (Deputy Mayor); G. Dingle; S. Dover, G. Francis; K. Jordan; D. Maher, J. Nell; S. O'Brien; S. Tucker, F. Ward; P. Kafer; Corporate Services Group Manager, Facilities and Services Group Manager; Sustainable Planning Group Manager; Commercial Services Group Manager and Executive Officer

		No apologies were received.
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Councillors Glenys Francis and Ken Jordan arrived at 5.35pm.

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SUBJECT

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COUNCIL REPORTS



ITEM NO. 1**FILE NO: 16-2009-890-1****DEVELOPMENT APPLICATION FOR SINGLE STOREY DWELLING AT NO. 29 BOYD BOULEVARD, MEDOWIE****REPORT OF: KEN SOLMAN - ACTING MANAGER, DEVELOPMENT AND BUILDING
GROUP: SUSTAINABLE PLANNING**
-----**RECOMMENDATION IS THAT COUNCIL:**

- 1) Delegate to the General Manager to seek to negotiate with the applicant for Development Application **16-2009-890-1** (29 Boyd Boulevard, Medowie) for agreement to formally incorporate adequate acoustic attenuation to provide internal noise levels consistent with Australian Standard 2021-2000, thereby enabling a formal application and determination to be given consent under delegated authority;
 - 2) Note that, in the event of negotiations referred to above being unsuccessful, development consent refusal will be issued under delegated authority.
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EXTRA-ORDINARY COUNCIL MEETING – 16 FEBRUARY 2010

026	Councillor Bruce MacKenzie Councillor Peter Kafer	It was resolved that Council move into Committee of the Whole.
	Councillor Bruce MacKenzie Councillor John Nell	<p>It is moved that Council support the development application for the single storey dwelling at 29 Boyd Boulevard, Medowie – that support being on the basis that noise attenuation be not required for the design and construction of the dwelling – and request the Group Manager Sustainable Planning to bring forward appropriate conditions should Council determine the application by way of consent, because</p> <p>1. It is noted that it is unfortunate that</p>

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		<p>the applicant bought the block of land in early 2009 before the promulgation of the ANEF 2025.</p> <p>2. The 149 zoning Certificate issued by Council and presumably attached to the contract of sale documents addressed ANEF 2012 and the block was not mapped within the ANEF 20-25 noise exposure contour.</p> <p>3. Since purchase the owners engaged a builder and chose a design without being aware that the new ANEF 2025 was going to be promulgated on Monday 19th October 2009.</p>
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AMENDMENT

	<p>Councillor Glenys Francis Councillor Ken Jordan</p>	<p>1. That Council defer consideration of the development application at 29 Boyd Boulevard, Medowie pending legal advice on the implications on approval of the development application and advice on taking Class Action against the Commonwealth Government.</p> <p>2. Invite the Commonwealth Minister for Defence, Senator John Faulkner to a meeting with all Councillors, the General Manager and the Executive Team regarding the management of aircraft noise in Port Stephens – and should the Minister decline to attend such a discussion in Port Stephens, then a deputation be sought with the</p> <p>Minister comprising : The Mayor, Deputy Mayor, one Councillor from each of the three Wards, the General Manager and the Group Manager, Sustainable Planning.</p>
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In accordance with the Local Government Act 1993, a division is required for this item.

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Those for the Amendment: Crs Glenys Francis, Ken Jordan, Steve Tucker and Shirley O'Brien.

Those against the Motion: Crs Peter Kafer, Daniel Maher, Geoff Dingle, John Nell Frank Ward, Bob Westbury, Sally Dover and Bruce MacKenzie.

The Amendment on being put was lost.

027	Councillor Bruce MacKenzie Councillor John Nell	It was resolved that the meeting be adjourned to allow Councillors to consult with the Group Manager Sustainable Planning.
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The Meeting was adjourned at 6.04pm.

The meeting re-commenced at 6.06pm with all councillors present.

The Motion was put and carried.

In accordance with the Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Peter Kafer, Geoff Dingle, John Nell Frank Ward, Bob Westbury, Sally Dover and Bruce MacKenzie.

Those against the Motion: Crs Glenys Francis, Ken Jordan, Daniel Maher, Steve Tucker and Shirley O'Brien.

028	Councillor Bruce MacKenzie Councillor Peter Kafer	It was resolved that Council move into the Open Council meeting.
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MOTION

	Councillor Glenys Francis Councillor Ken Jordan	It was moved: 1. That Council defer consideration of the development application at 29
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		<p>Boyd Boulevard, Medowie pending legal advice on the implications on approval of the development application and advice on taking Class Action against the Commonwealth Government.</p> <p>2. Invite the Commonwealth Minister for Defence, Senator John Faulkner to a meeting with all Councillors, the General Manager and the Executive Team regarding the management of aircraft noise in Port Stephens – and should the Minister decline to attend such a discussion in Port Stephens, then a deputation be sought with the Minister comprising : The Mayor, Deputy Mayor, one Councillor from each of the three Wards, the General Manager and the Group Manager, Sustainable Planning.</p>
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AMENDMENT

029	<p>Councillor Bruce MacKenzie Councillor Geoff Dingle</p>	<p>It is resolved that Council support the development application for the single storey dwelling at 29 Boyd Boulevard, Medowie – that support being on the basis that noise attenuation be not required for the design and construction of the dwelling – and request the Group Manager Sustainable Planning to bring forward appropriate conditions should Council determine the application by way of consent, because</p> <p>1. It is also noted that it is unfortunate that the applicant bought the block of land in early 2009 before the promulgation of the ANEF 2025.</p> <p>2. The 149 zoning Certificate issued by Council and presumably attached to the contract of sale documents addressed ANEF 2012 and the block was not mapped within the ANEF 20-25 noise exposure contour.</p>
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		3. Since purchase the owners engaged a builder and chose a design without being aware that the new ANEF 2025 was going to be promulgated on Monday 19 th October 2009.
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The Amendment on being put was carried became the Motion, which was put and carried.

In accordance with the Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Peter Kafer, Geoff Dingle, Frank Ward, Bob Westbury, Sally Dover and Bruce MacKenzie.

Those against the Motion: Crs Glenys Francis, Ken Jordan, Daniel Maher, Steve Tucker, Shirley O'Brien and John Nell.

The Mayor exercised his casting vote.

MATTER ARISING

030	Councillor Glenys Francis Councillor Steve Tucker	It was resolved that Council invite the Commonwealth Minister for Defence, Senator John Faulkner to a meeting with all Councillors, the General Manager and the Executive Team regarding the management of aircraft noise in Port Stephens – and should the Minister decline to attend such a discussion in Port Stephens, then a deputation be sought with the Minister comprising : The Mayor, Deputy Mayor, one Councillor from each of the three Wards, the General Manager and the Group Manager, Sustainable Planning.
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BACKGROUND

The purpose of this report is to present a development application significantly affected by noise pollution from Williamstown Air Force Base and Australian Noise Exposure Forecast (ANEF) 2025 noise exposure to Council for determination at the request of the Mayor.

Consent is sought for the construction of a single storey brick veneer dwelling at LOT: 30 DP: 248738 29 Boyd Boulevard. The site has been identified as aircraft noise affected and it is mapped within the 20-25 contours of the Australian Noise Exposure Forecast (ANEF) 2025. The proposed dwelling is conditionally acceptable within the 20-25 contours ANEF 2025 provided the recommendations of an acoustic report prepared in accordance with Australian Standard 2021-2000, are incorporated into the dwelling building design to provide appropriate acoustic attenuation.

The applicant has provided an acceptable acoustic report from Reverb Acoustics dated December 2009 (report No. 09-1434-R1). However, the applicants have stated that they do not want the acoustic report recommendations included in the building design specifications. They want the dwelling to be approved without the acoustic measures being implemented due to financial constraints.

The report received from Reverb Acoustics concludes that the dwelling can comply "providing the recommendations and procedures outlined in this report are followed, internal noise levels will be consistent with the intent of AS 2021-2000".

In assessing this application it is noted that without an appropriate acoustic attenuation it contravenes Council's Development Control Plan B2.13 Aircraft Noise and Australian Standard 2021-2000. The dwelling, without appropriate acoustic attenuation, can not be approved following a merit assessment under 79C of the Environmental Planning and Assessment Act 1979.

It is also noted that it is unfortunate that the applicant bought the block of land in early 2009 before the promulgation of the ANEF 2025. The 149 zoning Certificate issued by Council and presumably attached to the contract of sale documents addressed ANEF 2012 and the block was not mapped within the ANEF 20-25 noise exposure contour. Since purchase the owners engaged a builder and chose a design without being aware that the new ANEF 2025 was going to be promulgated on Monday 19th October 2009.

Council must assess the application under 79c of the Environmental Assessment and Planning Act 1979 and consider Australian Noise Exposure Forecast 2025.

FINANCIAL/RESOURCE IMPLICATIONS

Nil

LEGAL AND POLICY IMPLICATIONS

Approval is sought for Council to approve the dwelling within the 20-25 contours of Australia Exposure Forecast without appropriate noise attenuation. This is inconsistent with Council's Development Control Plan 2007 B2.13 and AS 2021-2000.

Consent of the application above may represent a precedent which has the potential to be used in future Development Applications as reason for consent noting fairness, consistency and equity in the application of Council planning provisions. There are approximately 2090 properties that will be affected in 20-25 ANEF as noted in the Draft Public Environment Report by the Department of Defence dated October 2009.

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

The social implications directly attributable to aircraft noise impacts and increased land-use conflict include reduced residential amenity and potential restriction of operation of the Williamstown Air-force Base and Newcastle Airport.

It is difficult to quantify the economic impacts of increased land-use conflict and/or changes to aircraft noise pollution due to encroaching development upon the Williamstown Air-force Base and Newcastle Airport. Cost may be significant on a local and national scale.

Aircraft noise has the potentially adverse impact on residential amenity. To permit the erection of dwelling without appropriate acoustic attenuation may unreasonably restrict the lawful ongoing operation of the Williamstown Air Force Base and Airport.

CONSULTATION

The application was not required to be exhibited as the application complied with Council's Local Environmental Plan 2000 and Development Control Plan 2007 – Section B6.

Council has liaised with the department of defence in relation to the promulgation of the ANEF 2025 and the forecast impacts of aircraft noise. The Department of Defence has expressed the view that dwellings such as proposed in this application must incorporate appropriate acoustic attenuation to ensure internal noise levels will be consistent with the intent of Australian Standard AS 2021-2000.

OPTIONS

Council has three options to consider with the proposed development:

- 1) Refuse the application as recommended.
- 2) To indicate support for the Development Application and request the Group Manager, Sustainable Planning to bring back draft conditions to a forthcoming Council meeting in the event that Council determines by way of approval, with such support being based upon a recognition of the need for points of difference to be clear in relation to potential precedent.

- 3) Defer the application to allow the applicant to amend the proposal to include appropriate acoustic attenuation.

ATTACHMENTS

- 1) Locality Plan
- 2) ANEF 20-25 map
- 3) Preliminary Assessment

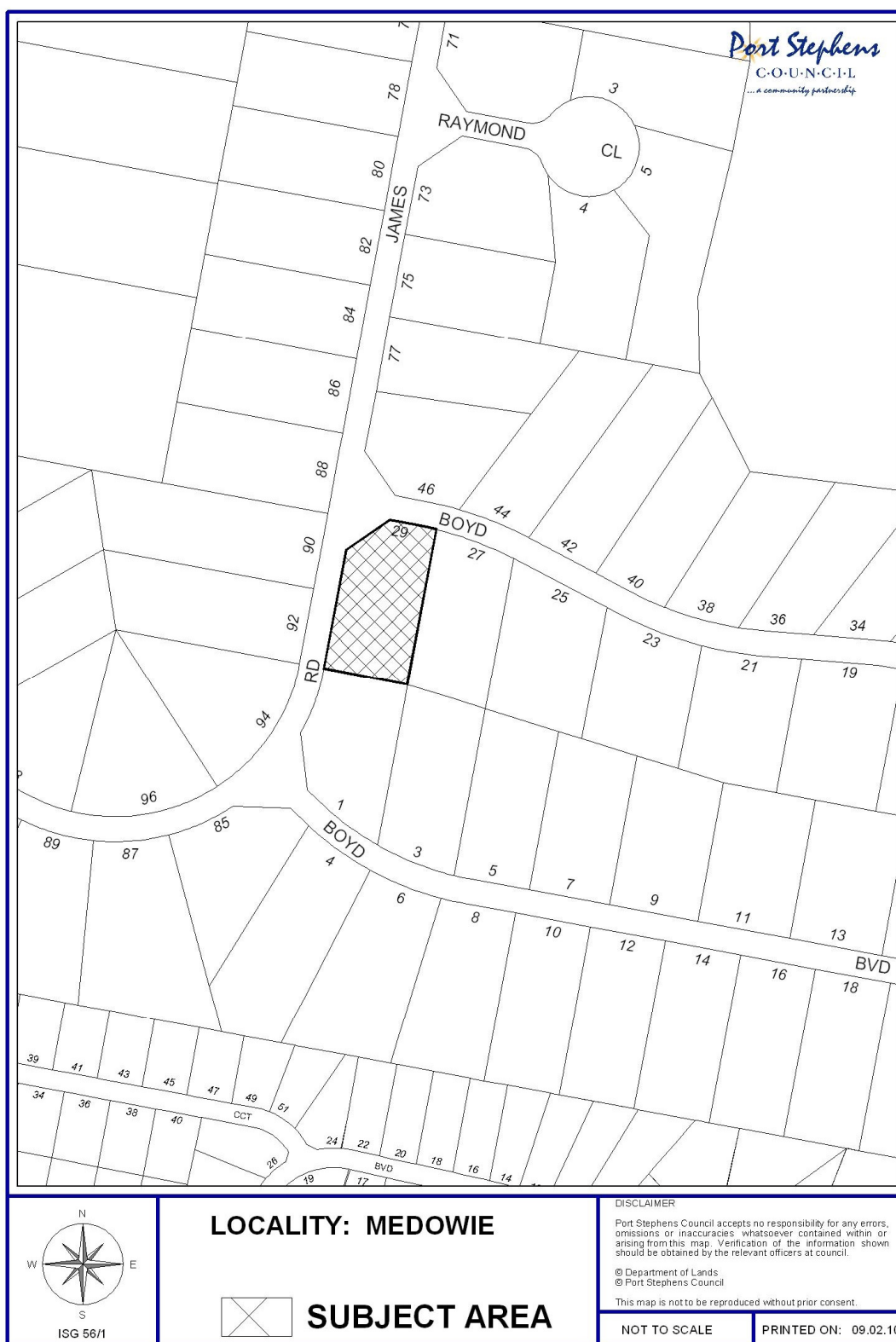
COUNCILLORS ROOM

- 1) Development Plans and Elevations
- 2) Statement of Environmental Effects
- 3) Aircraft Noise Impact Statement prepared by Reverb Acoustics dated December 2009
- 4) Supplementary Information dated 2 & 3 February 2010

TABLED DOCUMENTS

Nil

ATTACHMENT 1 LOCALITY PLAN



116 Adelaide Street, Raymond Terrace NSW 2324. Phone: (02) 49800255 Fax: (02) 49873612 Email: council@portstephens.nsw.gov.au

ATTACHMENT 2
ANEF 20-25 MAP IN RELATION TO THE LOCALITY PLAN



ATTACHMENT 3

PRELIMINARY ASSESSMENT

The application has been assessed pursuant to Section 79C of the Environmental Planning and Assessment Act 1979 and the following is a summary of those matters considered relevant in this instance.

THE PROPOSAL

The proposal is for a single storey brick veneer dwelling.

THE APPLICATION

Owner	Mr M Strain & Ms R M Hann
Applicant	Acroplan Pty Ltd
Detail Submitted	Development Plans Statement of Environmental Effects Acoustic Report

THE LAND

Property Description	LOT 30 DP 248738
Address	29 Boyd Boulevard, Medowie
Area	8167.48m ²
Dimensions	
Characteristics	The block is located on a corner and falls towards the northern boundary, mapped within 20-25 ANEF 2025 contours.

THE ASSESSMENT

1. Planning Provisions

LEP 1987 – Zoning	1 (c3) Rural Small
Development Control Plan	B2.13 Aircraft Noise

ATTRIBUTE	PROPOSED	REQUIRED	COMPLIES
LEP Requirements			
Floor Space Ratio	277m ²	4083m ²	Yes
Height	4.609	9	Yes
DCP Requirements			
Number of Storeys	1	2	Yes
Building Line Setback	28.6m	12m	Yes

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Side Setback	2m	13.5	Yes
Rear Setback	2m	40m	Yes
Privacy			
Resident Parking	2	2	Yes
Basix	Dwelling Valued at \$232 441.00	Yes	Yes

Discussion

The proposed dwelling is permissible on the site and generally complies with Council's Development Control Plan 2007 except Section B2.13 Aircraft Noise.

Council's policy states that Development Applications within 20-25 ANEF is conditionally acceptable provided an acoustic report is submitted and signed and endorsed by an acoustic engineer. The report must demonstrate that Australian Standard 2011-200 has been considered in the design of the building and any proposed attenuation measures must be incorporated into the design and conditions and consent.

The applicant has argued the following:-

- 1) Actual Location of the property in relation to the 20-25 ANEF contour.
- 2) Anticipated noise impact of JSF on the applicant's property, according to Draft PER.
- 3) Financial Constraints placed on the applicant based on Council's policy.
- 4) S149 Certificate received from Council pre ANEF 2025.

2. Likely Impact of the Development

The proposed development will not have an adverse impact on the neighbouring properties but will impact the occupants of the dwelling with regards to excessive noise.

3. Suitability of the Site

The proposed dwelling is suitable for the site provided an appropriate sound attenuation report is provided.

4. Submissions

The application wasn't required to be advertised under Port Stephens Development Control Plan 2007.

5. Public Interest

The proposal if approved by Council would have major ramifications on how Council would assess Development Application for dwelling and dwelling additions within the 20-25 ANEF contour. The policy states that all development applications for dwelling

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and dwelling additions are conditionally acceptable provided an acoustic report is submitted that is signed and endorsed by an acoustic engineer. This would set a precedent within the Port Stephens Shire and the policy would be very hard to police.

There being no further business the meeting closed at 6.34pm.

I certify that pages 1 to 16 of the Open Extra- Ordinary Minutes of Council 16 February 2010 were confirmed by Council at its meeting held on 23 February 2010.

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Cr Bruce MacKenzie
MAYOR